United Nations A/HRC/29/G/6

General Assembly

Distr.: General
24 June 2015

Original: English

Human Rights Council
Twenty-ninth session
Agenda item 4
Human rights situations that require the Council's attention

Note verbale dated 19 June 2015 from the Permanent Mission of Eritrea to the United Nations Office at Geneva addressed to the Office of the President of the Human Rights Council

The Permanent Mission of the State of Eritrea to the United Nations and other international organizations in Geneva presents its compliments to the Office of the President of the Human Rights Council, and has the honour to request the Office to circulate the herewith attached press release (annex I) and the response of the Ministry of Foreign Affairs of the State of Eritrea (annex II) to the reports of the commission of inquiry and of the Special Rapporteur on Eritrea as documents of the twenty-ninth session of the Council, including by posting them* on the extranet of the Council and by any other appropriate channels as deemed necessary.

* Reproduced as received, in the language of submission only.

GE.15-10377 (E)
1510377

Please recycle

Annex I

[English only]

Press statement

"Commission of inquiry" report: Cynical political travesty that undermines human rights

The People and Government of Eritrea finds the wild accusations leveled against them by the "Commission of Inquiry" established by the Human Rights Council of "systematic and gross violation of Human Rights" totally unfounded and devoid of all merit. These accusations are simply a continuation and escalation of politically motivated campaign to undermine the political, economic and social progress the country is making, including in the area of human rights. They are an attack, not so much on government, but on the civilized people and society who cherished values and dignity.

These accusations and the despicable attempt to silence those who have anything positive to say about Eritrea are a transparent attempt race time to impede the increasing and increasingly productive international engagement with Eritrea. Clearly, the resort to extreme charges and indecent hyperbole, including cynical and unwarranted reference to "possible Crimes against humanity," is intended to forestall a sober reflection of the reality in Eritrea and to rush matters and force the issue before fairness and injustice can prevail. It is also undeniable that there are those who will hide behind these outrageous claims to whitewash their transgressions against Eritrea to seek pretext acts to destabilization.

Eritrea has consistently stated that as nation born in struggle for human Rights, in remains fully committed to ensuring and enhancing the human rights of its people, to improving the quality of life of all its citizens. It is a telling indictment that in the region under severe threat from violence, gross abuse, extremism and terrorism, where so many commit so many crimes, the sponsors of the Commission chose to attack peaceful, stable, harmonious, human development-focused Eritrea. They need to be forcefully challenged and held accountable as their actions and lack of integrity and professionalism undermine human rights institutions as well as regional peace and stability. Eritrea, accordingly calls on all nations and on all people who value fairness, justice and human rights to demand an end to the travesty that is perpetrated by "Commission of Inquiry".

For Eritrea the current attacks aimed at undermining our sovereignty and progress are a matter of Déjà Vu. We were denied our right to independence as a former colonial country because of the perceived "strategic interests" of the United States. Few supported us during our legitimate struggle for freedom. The powerful tried to denigrate our cause and bombed us into submission. We were routinely written off. And yet, by dint of our determination and humanity, we immerged victorious.

Today, despite the vile slanders and false accusations despite a deafening international silence in the face of the illegal occupation of our land in violation of international law, despite economic pressures and encouragement of illegal migration, our resolve and confidence that we will build a dignified and prosperous nation remains unshaken.

Eritrea will not be diverted from that lofty objective and will redouble its determination and efforts to achieve it.

We are fully ready for any confrontation with the U.S. and will shatter the reckless "human rights" racket by the hostile forces through our toughest reaction.

The moves of the hostile forces to dare provoke the socialist system of the DPRK which was chosen and has been consolidated by the Korean people will not be able to escape disgraceful doom.

Annex II

[English only]

Response of the Government of Eritrea to the report of the Commission of Inquiry

Commission of Inquiry report: Devoid of credibility and substance

1. The Commission of Inquiry and Special Rapporteur (SR) appointed as special mandate-holders to assess the human rights situation in Eritrea have released two parallel reports. As well-meaning as their initial mandates may appear before members of the Human Rights Council (HRC), it appears that the record and evidence regarding both special mandate-holders reveal that they were extra-procedurally appointed, overstepped the terms of their mandates in their investigation of Eritrea and published reports that do not represent an objective analysis of the human rights situation in Eritrea.

2. The Commission report and the process of its compilation, bereft of neutrality and impartiality, represents numerous substantive and procedural shortcomings that defy, in both letter and spirit, the Universal Declaration of Human Rights and the guiding principles the HRC. The premises forwarded in the 484-page report of the Commission, in particular, is filled with bias, errors, unsubstantiated and illogical claims, misrepresentations and evidentiary weaknesses that are used to reach final and extraordinary conclusions.

Issues of methodology

3. Evidence from the process of forwarding the resolutions for the special mandate-holders violates the guiding principles of the HRC. The main architects of the resolution establishing the Commission, one influential HRC member state in particular, hand-twisted three African countries to cosponsor the draft resolutions against Eritrea. Notably, they failed to make it an official African Group position because the Group's standing position does not support country-specific mandates. Drafts were intentionally kept secret until the 11th hour in order to deny informed and objective decisions by delegates. In the end, Eritrea was unlawfully subjected to duplicate mandates.

4. The failure of the Commission was also manifested in the methods of work section as expressed in paragraph 6 of the report. The resolution establishing this mandate failed to adequately specify the temporal scope of the Commission, which theoretically can span any time period in Eritrean history. The Commission determined the period of investigation for itself as a continuation of the ongoing violation of the guiding resolutions. This is a grave substantive oversight in which the Commission overstepped its authority to determine the temporal scope.

5. The Commission lowered its standard of proof to the never-seen-before, exceptional and unprecedented, "reasonable grounds to believe. Using such language highlights, once again, the inquisitional nature of the Commission. The justification for using this lowered standard is that the Commission was not allowed into Eritrea and that there was a "lack of cooperation" by the Eritrean State. It goes on to state that their chosen standard of proof was "consistent with the practice of other United Nations fact-finding bodies, especially those which have not been granted access to the territory where the alleged violations have occurred." No other Commissions are

explicitly cited because this is not, in fact, true. Justifying the Commission's violations of HRC procedures based on the violations of past Commissions is not acceptable by any honest observer. Given that the Commission was extra-procedurally appointed, Eritrea reserves the right to deny entry to the Commission and its ensuing fishing expedition into Eritrea. Eritrea is essentially left with a choice of accepting the lesser of two evils: to undergo a fishing expedition or to submit to an exceptionally low standard of evidence. Eritrea chooses to make no such choice.

6. The report selectively cites dubious sources using questionable methodologies. There is little credibility to this report as it relies on claims emanating from self-described "human rights activists" with openly declared regime-change agenda, challenging the very sovereignty of the Eritrean state. Additionally, the majority of the claims made in the report come from 550 anonymous individuals who are comprised of refugees, whose pending asylum cases are often contingent upon hyperbolic accounts of persecution from repression. This represents an obvious and stark conflict of interest. The sample of 550 individuals is not representative of the vast majority of Eritreans abroad and inside the country. Notably, the Commission also rejected the requests of more than the 200 Eritrean community organizations wishing to discuss the issue with the SR and the Commission.

7. Moreover, the heavy reliance on refugee testimonies and information from countries with a belligerent stance on Eritrea such as Ethiopia and Djibouti is also a continued violation of guiding principles of the HRC.

8. The methods of fielding testimonies represent both "selection" and "sampling" bias, which are perhaps the most fundamental flaws of any survey-based research of this sort. The Commission and SR did not field testimony from one open source in which all willing participants could add their input and then be randomly sampled, as would be the case with strong investigative studies. Additionally, there were no indications of "blinding" to protect against potential bias of the Commission. Lastly, there was no third party to overlook the ethical basis and credibility of work by the Commission and SR such as an Institutional Review Board. For this reason, there is no way to ascertain that solicitation of testimonies was done in an ethical manner free of bias. Since the final conclusions of the report are principally based on testimonies acquired from these flawed methodologies, those final conclusions come into question.

9. The Commission deliberately excluded the voice of mining companies that were targeted by the report. Human rights groups and Corporate Social Responsibility groups investigating the work of local mining companies vis-a-vis human rights were also ignored and excluded from the final report despite multiple attempts to reach out. The press release of one mining company indicated that "despite attempts by Nevsun to engage with the Commission, it chose not to engage with the Company to verify any basic facts or allegations or to report on the Company's independent human rights assessment. This brings into serious question the methodology, process and collation of information in their report."

Crimes against humanity

10. Based on numerous unsubstantiated claims of crimes that have presumably been committed by the Eritrean government, the Commission concluded that there were human rights violations that were "systematic, widespread, and gross." In order to support such an extraordinary conclusion the Commission would have had to prove the veracity of the alleged crimes and that these were State sanctioned or allowed to take place without the State taking measures to prevent them or to punish those responsible. On the contrary, the Government of Eritrea, despite its limited resources and its relatively short history, has taken numerous measure to combat crimes that take place within its jurisdiction.

11. The Commission also concludes, "some of these violations may constitute crimes against humanity." Since there is no evidentiary support for the claim of "systematic, widespread and gross human rights violations", then it follows that there equally no support for the final conclusion of "crimes against humanity" being committed by the Government of Eritrea.

General lack of rule of law

12. Contrary to the false claims made by the Commission that there is a "general lack of rule of law in the country", Eritrea is governed by the rule of law. The Government has enacted and implemented 176 Proclamations and more than 120 Legal Notices since independence twenty-four years ago. The recent revision of the Transitional codes and the enacting of new Civil and Penal Codes that are in consonance with universally accepted standards and norms is another attestation of the Government's continuous commitment to strengthen the rule of law. The enforcement of the rule of law is in fact vividly reflected in the social cohesion and harmony, peace and stability, dignified life, enjoyment of fundamental rights, and active and responsible participation of citizens that prevail in the country.

13. Furthermore, Eritrea has signed and ratified numerous International Conventions and Instruments. These have been incorporated in its domestic laws and are diligently observed. The claim that there is no rule of law is thus grossly at variance with the prevailing reality and only peddled for political ends.

Controlled surveillance system

14. The Commission of Inquiry alludes to the government's use of "a pervasive spying and surveillance system" to target its citizens at home and abroad in order to create a "general climate of fear". The Commission then cites the "coupon system originally created to allow accesses to subsidize goods" as a principal instrument of government surveillance inside the country. This is patently false. The Government subsidizes education – which is free from kindergarten to University – and health services. Food subsidy, for certain essential commodities, is part and parcel of this approach and it is essentially geared to provide safety-net to low-income segments of the population from market shocks. Due to financial constraints, the coupon system exists in a handful of urban areas only. So its outreach is extremely limited even if it were to be used for the spurious objectives that the Commission insinuates. Similarly, Eritrea's diplomatic presence in few capitals – most of which are have skeletal and even only one-diplomat staff – can hardly be used to spy on the almost one million strong Eritreans abroad. These accusations are thus groundless and further illustrate the politically motivated nature of the report.

Sexual violence against women

15. The Commission's report claims that "violence against women is to such a degree it also constitutes sexual slavery and torture." Such a remarkable claim requires ample evidence in its support. However, in its Methods of Work section, the Commission admits to "significant difficulties in the investigation and documentation" of such claims. It further admits that its sample, which is not representative of the larger Eritrean community, may have led it to "only partially capture the extent" of challenges faced by Eritrean women refugees. Furthermore, it must be noted that Eritrea's Penal Code contains explicit provisions for severe punishment against rape and/or sexual violence. Eritrean women had played an unparalleled role in the liberation struggle and gender equality constitutes a fundamental pillar in Independent Eritrea's political, social and economic dynamics and development. In brief, there is no space for sexual slavery and widespread, systemic, violence against women.

Travesty of international law and sovereign rights

16. The Commission and the SR as supposed independent experts have failed to recognize the interdependence between peace and security, economic, social and cultural rights in addition to civil and political rights. The 1948 Universal Declaration of Human Rights states, "that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and that all human rights must be treated in a fair and equal manner on the same footing and with the same emphasis." However, in spite of the equality among rights, the Office of the High Commissioner for Human Rights still holds that "no social phenomenon is as comprehensive in its assault on human rights as poverty." However, the Commission takes it upon itself to downplay the role of poverty, stating that the "dire economic situation in a country cannot be an excuse."

17. The Commission fails to adequately recognize that sovereign Eritrean territories remain under Ethiopian occupation in defiance of international law. The Occupation is a violation of the 2000 Algiers Agreement, the Hague Conventions of 1899 and 1907, and the Geneva Convention IV. In March 2012, Ethiopia initiated unprovoked attacks on Eritrea without previous and explicit warning, violating Article 1 of the 1907 Hague Convention (III) relative to the Opening of Hostilities. Also, Eritrea is under the regime of unjust UN sanctions, hampering economic investment and development. These externally imposed factors must be taken into serious consideration when analyzing the human rights situation in Eritrea.

National service as forced labor

18. The Commission claims that "national service is based on conditions and measures that are not proportionate, reasonable or necessary in the interest of national defense." It is not within the Commission's expertise or mandate to determine this on behalf of the Eritrean people and government. The Commission is effectively denying the Eritrean people the right to defend themselves in an existential crisis against a foe 15 to 20 times their total population size.

19. Furthermore, the Commission has failed to refer to independently carried out research including those made by the Home Office of the United Kingdom, the fact-finding mission of the Danish Immigration Service, and a delegation from the Norwegian Ministry of Justice. Observations published by these foreign delegations that have actually visited Eritrea, unlike the Commission, demonstrate the huge discord between the Commission's conclusions regarding national service and the realities on the ground.

20. As far as the extended nature of national service in Eritrea, the Commission yet again ignores the fact that by law national service is only required for eighteen months. However, due to Ethiopia's refusal to abide by a final and binding ruling and the international community's continued indifference to this deliberate flaunting of international law by Ethiopia, the Government of Eritrea had been left with no other choice but to rely on its population to defend its independence and sovereignty. Despite continued challenges, the Eritrean Government is making concerted efforts to provide the requisite educational and job opportunities for those who fulfill their national service obligations.

Expanded engagement and cooperation on human rights

21. Despite twenty-four years of hostilities and challenges to Eritrea's sovereignty, development and political progress, the nation has achieved steady gains in almost all sectors. Eritrea has worked closely and transparently with all concerned international partners and stakeholders within the framework of the Universal Periodic Review to develop Eritrea's human rights system. Eritrea has also worked closely with the local

UN Country Team and is now one of very few countries in the world on track to meet most of the Millennium Development Goals.

Conclusion

22. In its conclusion, the Commission reiterates the outrageous allegations based on speculation, hearsay and unsubstantiated claims made throughout the report. The advanced unedited version, in particular, states unequivocally "that systematic, widespread and gross human rights violation have been and are being committed by the Government of Eritrea" and "that the violations in the areas of extrajudicial executions, torture (including sexual torture), national service and forced labour may constitute crimes against humanity."A report of this nature and magnitude would seemingly require much more than the rushed lifespan of the investigation and compiling of the report.

23. Furthermore, the Commission's recommendation to the international community "to assist Eritrea and Ethiopia to solve the border issue through diplomatic means"is a violation of the 2000 Algiers Agreement that obligates both countries to accept the "final and binding" border delimitation decision of the Eritrea-Ethiopia Border Commission (EEBC).Any calls for additional dialogue or revisions to the EEBC decision by Ethiopia or the international community is a violation of Article 4.2 of the Algiers Agreement that clearly stipulates that "the Commission shall not have the power to make decisions ex aequo et bono".